



POLICE DEPARTMENT CITY OF NEW YORK

February 10, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Matthew Lewis
Tax Registry No. 941054
113 Precinct
Disciplinary Case No. 2014-12673

Police Officer Jose Vasquez-Miranda
Tax Registry No. 942655
113 Precinct
Disciplinary Case No. 2014-12674

Charges and Specifications:

Disciplinary Case No. 2014 12673

1. Said Police Officer Matthew Lewis, on or about February 7, 2014, at approximately 2133 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED], Queens County, wrongfully used force in that he struck DaVante Sconiers without police necessity.
P.G. 203-11 – USE OF FORCE
2. Said Police Officer Matthew Lewis, on or about February 7, 2014, at approximately 2133 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED], Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he threatened to use force against DaVante Sconiers.
P.G. 203-10 – PUBLIC CONTACT – PROHIBITED CONDUCT
3. Said Police Officer Matthew Lewis, on or about February 7, 2014, at approximately 2133 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED], Queens County, was discourteous in that he spoke rudely to Orayne McEachron and stated, in sum and substance: GET ON THE FUCKING GROUND.
P.G. 203-10 – PUBLIC CONTACT PROHIBITED CONDUCT

Disciplinary Case No. 2014-12674

1. Said Police Officer Jose Vasquez-Miranda, on or about February 7, 2014, at approximately 2133 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED], Queens County,

wrongfully used force in that he punched Orayne McEachron without police necessity.

P.G. 203-11 – USE OF FORCE

2. Said Police Officer Jose Vasquez-Miranda, on or about February 7, 2014, at approximately 2133 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED], Queens County, intentionally tightened the handcuffs on Orayne McEachron's wrists which resulted in lacerations to his wrists.

P.G. 203-11 – USE OF FORCE

3. Said Police Officer Jose Vasquez-Miranda, on or about February 7, 2014, at approximately 2133 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED], Queens County, wrongfully used force in that he punched DaVante Sconiers without police necessity.

P.G. 203-11 – USE OF FORCE

Appearances:

For CCRB-APU: Suzanne O'Hare, Esq.

For Respondents: Michael Martinez, Esq.

Hearing Dates:

October 29, 2015 and December 18, 2015

Decision:

Respondent Lewis is found Guilty of Specification No. 1. He is found Not Guilty of Specification Nos. 2 and 3.

Respondent Vasquez-Miranda is found Guilty of Specification Nos. 1 and 2. He is found Not Guilty of Specification No. 3.

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 29, 2015 and December 18, 2015.¹ Respondents, through their counsel, entered pleas of not

¹ The trial record was held open until December 30, 2015 for receipt of a transcript of a 911 call.

guilty to the subject charges. The CCRB Administrative Prosecutor called DaVante Sconiers² and Orayne McEachron as witnesses and offered a video recording into evidence. Each Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Lewis Guilty of Specification No. 1 and Not Guilty of Specification Nos. 2 and 3, regarding the charged misconduct, and I find Respondent Vasquez-Miranda Guilty of Specification Nos. 1 and 2, and Not Guilty of Specification No. 3, regarding the charged misconduct.

FINDINGS AND ANALYSIS

It is not disputed that on February 7, 2014, Respondents were on duty, assigned to the 113 Precinct, performing impact overtime assigned to a Strategic Enforcement Team which was focusing on gang activity in the Rochdale Village area of Queens where gang-related shooting incidents had taken place. At about 2130 hours, Respondents spotted DaVante Sconiers who was in front of the [REDACTED] located on [REDACTED], Queens. [REDACTED]

Sconiers testified that he had just come out of the [REDACTED] with his friend Person A when he saw Respondent Vasquez-Miranda, who he recognized as a police officer, exit a black Impala and start walking towards him. Sconiers began walking away and when he heard a voice call out "Devo," which is his nickname, he

² Sconiers testified via video conferencing technology.

“took off” and began running away because he is “always” being “harassed by the same officers” who always search him by “going in my nuts” and “flipping through my whole private area.” After he had been running for about 20 seconds, Sconiers saw the Chevy Impala, which was being driven by Respondent Lewis, pull up alongside of him.

Respondent Lewis used the car to cut him off when he tried to run across the street.

Respondent Lewis stopped the car, got out, came up behind Sconiers as he was running, and threw him face down on the divider in the middle of the street. Respondent Lewis then punched him a “few” times on the back of his head and on the side of his face.

Respondent Vasquez-Miranda, who had been pursuing Sconiers on foot, soon arrived at the scene and started punching him also. The officers were “still punching” Sconiers after they handcuffed him.

Sconiers saw a red Ford pull up and stop next to them and he heard someone in the vehicle yell out, “You can’t do that! Stop!” Respondent Vasquez-Miranda pulled a male out of the driver’s seat of the Ford. When the male asked what they were doing, he was told, “Mind your business.” He was then thrown down on the ground, punched and then handcuffed. Sconiers heard the male say “chill out, what are you doing?” Sconiers observed that the male’s lip was bleeding. Sconiers told the male that it was his (Sconiers’) fault that he was being arrested. Sconiers later learned that the male’s name was Orayne McEachron. In Queens County Criminal Court, Sconiers pleaded guilty to a charge of Disorderly Conduct and was sentenced to pay a fine. Sconiers confirmed that he had pleaded guilty to Disorderly Conduct on about ten other occasions. Sconiers learned that Person A had recorded this incident on his cell phone [CCRB Exhibit 1 discussed below].

On cross examination, Sconiers confirmed that: He has been arrested by Respondents 13 or 14 time; that he has been arrested on charges of robbery, menacing and possession of marijuana; that he has been stopped many times by the police while he was standing in front of the deli; and that on one occasion when he and Person A were standing on the corner of [REDACTED], an individual shot him in the leg and shot Person A in the stomach.

Orayne McEachron testified that he had never seen Sconiers or either Respondent prior to February 7, 2014. At about 10:00 p.m. that day, he was wearing his [REDACTED] uniform driving his red Nissan on [REDACTED] on his way to deliver a pizza when he saw "a boy," whose name he later learned was Davante Sconiers, running towards his Nissan. He was being chased by two men who he assumed were police officers. One officer was running behind the other man. McEachron pulled over and stopped. He saw Sconiers fall down and the officer closest to Sconiers, whose last name he later learned was Lewis, fell on top of Sconiers on the divider in the middle of the street and "hit him" more than two times "in the head." The second officer, whose last name he later learned was Vasquez, arrived where Lewis had fallen on top of Sconiers about ten seconds later and "kind of just piled on them and kind of just jumped on his back as well," and "hit him," and dropped down to the ground, and put his knee on Sconiers' back.

McEachron testified that he called out, "Hey man you can't be doing that. You can't hit him like that. You guys can't be doing that." Respondent Lewis told him, "Shut the fuck up. Keep driving." McEachron called 911 on his cell phone. [CCRBX 6 is a CD of McEachron's 911 call and CCRBX 6A is a certified transcript of the 911 call.]

Respondent Vasquez-Miranda then walked over to his car and told him to move his car because he was blocking traffic. McEachron refused to move his car. Respondent Vasquez-Miranda asked him to step out of the car. McEachron tossed his cell phone into the backseat and stepped out of the car. He turned his back to Respondent Vasquez-Miranda so that he could handcuff him. Respondent Vasquez-Miranda grabbed his shoulder. McEachron turned around and told him, "I'm not going to let you slam me on the ground... Tell me what you want and I'll do it." McEachron repeated this several times until Respondent Vasquez finally told him to get on the ground. He then went to the ground. He was handcuffed and Respondent Vasquez-Miranda punched him on his face causing his chin to sustain lacerations from hitting the pavement and causing his tooth to cut through his lip. [CCRBX 3 consists of four photographs depicting abrasions on McEachron's chin and a cut on his lip].

McEachron testified that after he complained to Respondent Vasquez-Miranda that the handcuffs he had placed on his wrists were too tight, Respondent Vasquez-Miranda made the handcuffs even tighter which caused a laceration on one of his wrists [CCRBX 5 is a photograph depicting McEachron's wrist]. He was [REDACTED] [REDACTED] transported to the 113 precinct where he was treated by EMS for his injuries. [REDACTED]

He confirmed that in 2010 he was convicted of petit larceny and placed on three years of probation for allowing friends to steal from a Target store while he was working there as a security guard. [REDACTED]

[REDACTED] When he saw Respondent Lewis chasing Sconiers, he assumed Respondent

Lewis was a police officer because, "he is white, then I saw his little patch on his jacket," and because "in our neighborhood you don't see white people chasing black people unless they're cops." McEachron has filed a civil lawsuit against Respondents and the Department seeking damages as a result of this incident.

Respondent Lewis testified that he was familiar with Sconiers because during 2010 and 2011 he "ran a crew" and was "hanging out in Rochdale doing robberies." He knew that Sconiers had been arrested as many as ten times and that he and another member of the "Snow Gang" had been involved in a shooting. When he and Respondent Vasquez-Miranda observed Sconiers on February 7, 2014 at about 10:00 p.m. in front of the deli, they noticed a "suspicious bulge" in front of his waistband. Respondent Lewis intended to ask Sconiers why he was standing in front of the deli, but as soon as they made eye contact with each other, Sconiers grabbed his front waistband and ran off. Respondent Vasquez-Miranda chased Sconiers on foot while Respondent Lewis pursued him in the car. He saw Sconiers throw loose Ziploc bags of marijuana to the ground while he was running. Sconiers also went behind a car and dropped an object which Respondent Lewis later discovered to be a switchblade.

Respondent Lewis parked the car and chased him on foot. He tackled him to the ground in the middle of the street, got on top of him and tried to grab his hands to handcuff him. He denied that he had struck Sconiers. Sconiers was flailing his hands, kicking his legs, and at one point, he went onto his stomach with his arms crossed and made his hands into fists. While he was struggling with Sconiers on the pavement, Respondent Vasquez-Miranda arrived at the scene and was "hovering" next to him on the side where Respondent Lewis holsters his firearm.

A red car pulled up near them and the driver, whose name Respondent Lewis later learned was McEachron, called out, "You can't be doing that." Respondent Lewis, concerned about his "zone of safety," told McEachron two or three times that he was blocking traffic and needed to move his vehicle. He did not know at the time whether or not McEachron was a friend of Sconiers. Respondent Vasquez-Miranda also asked McEachron to move but McEachron refused and pushed Respondent Vasquez-Miranda. Respondent Vasquez-Miranda then began struggling to handcuff McEachron. Respondent Lewis called for backup. Sconiers and McEachron were eventually handcuffed and taken to the 113 precinct in separate vehicles. Sconiers tried to kick out the window of the vehicle he was in. Respondent Lewis testified that he told McEachron to "get on the fucking ground" in the heat of the moment after McEachron had refused to comply with his orders numerous times.

Respondent Vasquez-Miranda testified that after he saw Sconiers "peeking in and out" of the deli, he exited their car and called out, "What's up Devo?" He was able to see a bulge in Sconiers waistband even though Sconiers was wearing a puffy jacket. Sconiers started running. He chased Sconiers and saw him throw Ziploc bags of marijuana on the ground. Respondent Lewis pursued Sconiers in their car and then on foot and he saw them both fall to the ground. He saw a car slowing down near them. When he reached them he saw they were "fighting and tussling." Sconiers was "flailing his arms" and kicking trying to get away. He assisted in handcuffing Sconiers.

He approached the car and told the driver, whose name he later learned was McEachron, multiple times to move his vehicle but he replied "no" each time. He asked McEachron to produce identification but McEachron refused. He asked McEachron to

step out of the vehicle and he attempted to place him under arrest. He tried to turn him around by grabbing his arm but McEachron pushed him in the chest with both hands. Respondent Lewis helped him handcuff McEachron. McEachron never complained that the handcuffs were too tight. He denied that he had punched Sconiers or McEachron and he also denied that he had intentionally tightened McEachron's handcuffs. During his CCRB interview he did not state that McEachron had pushed him during this incident.

Respondent Lewis is charged with having wrongfully used force against Sconiers by striking him without police necessity.

If Sconiers had been the only witness called by the Administrative Prosecutor, I would find that his testimony, standing alone, was insufficient to support a finding of guilt based on his bias against Respondent Lewis, who he asserted had harassed him regularly, and based on inconsistencies between his testimony at this trial and statements he made at his CCRB interview. However, I find Respondent Lewis guilty because Sconiers' claim that Respondent Lewis was punching him even though Sconiers was face down in a prone position on the pavement and Respondent Lewis was on top of Sconiers straddling him, was corroborated by the credible testimony of McEachron.³

McEachron's claim that he inadvertently became an eyewitness to this incident when he saw Respondent Lewis fall on top of Sconiers as he was driving by them to make a pizza delivery, and his claim that he had never seen Sconiers or Respondent Lewis prior to this incident, were not refuted. Moreover, McEachron did not betray any anti-police bias (he professed "a profound respect for police officers" and asserted that when he was

³ The video offered in evidence by the Administrative Prosecutor (CCRBX 1) does not depict Respondent Lewis punching Sconiers.

in college he had studied to become a police officer). Also, McEachron's claim that if he had only seen Respondent Lewis trying to handcuff Sconiers, "I would have kept driving" but "I saw him punching him which was why I didn't drive away," has the ring of truth. Finally, I find that McEachron's candid admission that he had once allowed friends to steal items from a store where he was working as a security guard, does serve to discredit his testimony regarding what he saw Respondent Lewis doing to Sconiers.

Thus, I find that McEachron is a truthful, independent witness to Respondent Lewis' apprehension of Sconiers, who was not shown to have any reason to invent his testimony that he saw Respondent Lewis sitting on top of Sconiers punching him.

The believability of McEachron's testimony as to what he saw is enhanced by the fact that he immediately reported what he was seeing to this Department. During his contemporaneous call to 911, McEachron told the operator, "I just stopped because I seen them punch homie." (CCRBX 6) Also, the video offered in evidence by the Administrative Prosecutor (CCRBX 1) corroborates McEachron's claim that he had a clear view of Respondent Lewis' physical interaction with Sconiers because he stopped his car right next to where Respondent Lewis fell on top of Sconiers in the street.

Although both Respondents described a struggling Sconiers who was refusing to allow Respondent Lewis to handcuff him, I credit McEachron's testimony that Respondent Vasquez-Miranda arrived at the scene only ten seconds after Respondent Lewis had fallen on top of Sconiers. Thus, even if I credited Respondents' claim that Sconiers was resisting being handcuffed, since Respondent Vasquez-Miranda was present to assist Respondent Lewis in handcuffing Sconiers and since Sconiers was face down in

a prone position underneath Respondent Lewis, there was no police necessity that would justify Respondent Lewis' action of punching Sconiers.

Therefore, Respondent Lewis is found guilty of having wrongfully used force against Sconiers by striking him without police necessity.

As to the charge that Respondent Lewis engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by threatening to use force against Sconiers, I find Respondent Lewis not guilty. The Administrative Prosecutor asserted during her opening statement that Respondent Lewis had threatened Sconiers by telling him, "You like running. Watch when we get to the precinct, we'll beat you up even more." However, neither Sconiers nor McEachron testified at this trial that Respondent Lewis had made this remark and in her closing argument the Administrative Prosecutor did not cite to anything in the record to support her contention that Respondent Lewis had actually made the threatening remark she had cited during her opening statement.

Lastly, it is alleged that Respondent Lewis was discourteous to McEachron in that he spoke rudely to him when he told McEachron, "Get on the fucking ground."

Both Respondents confirmed that it is Respondent Lewis' voice that is heard on the video offered in evidence by the Administrative Prosecutor (CCRBX 1) yelling at McEachron to "get on the fucking ground." I find Respondent Lewis not guilty because McEachron admitted that even though Respondent Vasquez-Miranda repeatedly told him to "stop resisting, stop resisting," he did not immediately get down on his hands and knees. Instead, he repeatedly told Respondent Vasquez-Miranda, "You're not going to slam me on the ground." McEachron further admitted that Respondent Lewis' command

to McEachron to “get on the fucking ground” was issued before McEachron got down on his hands and knees and was handcuffed.

The use of profanity by an officer solely for the purpose of getting a civilian to comply with a lawful order issued during a street encounter has been found not to constitute actionable misconduct. For example, in *Case No. 77896/02*, an officer who told a belligerent and difficult suspect, “I’ll do whatever the fuck I want out here,” was found not guilty of discourtesy; in *Case No. 78667/03*, an officer assigned to keep an unruly crowd at a distance from a crime scene who yelled, “Get the fuck back,” had the discourtesy charge against him dismissed; and in *Case No. 80777/05*, an officer who uttered a remark containing the word “fuck” was found not guilty of discourtesy because the officer made this remark while he was effecting the arrest of a suspect who was engaging in resistive behavior. Recently, in *Case No. 2014 11644* (June 19, 2015), a sergeant was found not guilty of having been discourteous to a prisoner when he told him, “Shut up. Mind your fucking business,” during an enforcement action.

Consistent with these decisions, I find Respondent Lewis not guilty of having been discourteous to McEachron when he ordered him to “get on the fucking ground.”

Respondent Vasquez-Miranda is charged with having wrongfully used force against McEachron by punching him without police necessity.

McEachron has consistently alleged that Respondent Vasquez-Miranda punched him in the face. During the 911 call he placed from the scene of this incident, McEachron told the 911 operator, “He just punched me in the face.” (CCRBX 6) Moreover, McEachron’s claim at this trial that after Respondent Vasquez-Miranda had handcuffed him while he was on the ground, Respondent Vasquez-Miranda had punched

him in the face which resulted in his face hitting the pavement and causing a tooth to cut his lip is corroborated by the photos of McEachron's cut and swollen lower lip (CCRBX 3).

Although Respondent Vasquez-Miranda denied that he had punched McEachron in the mouth, he conceded that McEachron's lip was bleeding and that EMS had treated McEachron's injury at the precinct. Respondent Vasquez-Miranda offered no plausible alternative explanation for how McEachron sustained this specific injury. Thus, this is not a situation where an officer who has been accused of causing an injury to a civilian has offered an innocent explanation for the causation of the injury that is just as plausible as the civilian's claim as to how the injury occurred.⁴

Finally, I reject Respondent Vasquez-Miranda's testimony at this trial that McEachron had pushed him in the chest with two hands because at Respondent Vasquez-Miranda's CCRB interview, which was conducted only two months after this incident, he did not claim that he had been pushed by McEachron. Thus, Respondent Vasquez-Miranda's assertion at this trial that McEachron had pushed him in the chest appears to be a belated attempt to justify his own use of force as a proper and necessary response to physical force initiated by McEachron.

Based on the above, I find Respondent Vasquez-Miranda guilty of having punched McEachron in the face without police necessity.

It is also charged that Respondent Vasquez-Miranda "intentionally tightened the handcuffs on Orayne McEachron's wrists which resulted in lacerations to his wrists."

⁴ See *Vallebuona v. Kerik*, 294 AD2d 44, 742 NYS2d 626, NY App Div LEXIS 5903 (1st Dept 2002).

Respondent Vasquez-Miranda was under a duty to ensure that the handcuffs he placed on McEachron's wrists were tight enough that McEachron would not be able to slip his hands out of the handcuffs.⁵ However, McEachron testified that after he complained to Respondent Vasquez-Miranda that the handcuffs he had placed on his wrists were too tight, Respondent Vasquez-Miranda tightened the handcuffs even more.

I credit McEachron's claim because his assertion is corroborated by the photo that was taken the day after his arrest which depicts a laceration and bruising on McEachron's wrist (CCRBX 5) that is consistent with the type of injury that would be caused by a handcuff that had been locked too tightly on his wrist.

Based on the above, I find Respondent Vasquez-Miranda guilty of intentionally tightening the handcuffs he had placed on McEachron.

Lastly, Respondent Vasquez-Miranda is charged with having wrongfully used force against Sconiers by punching him without police necessity. Sconiers' claim that Respondent Vasquez-Miranda hit him while he was prone on the pavement underneath Respondent Lewis was supported by McEachron's testimony. However, McEachron's entire description of all of Respondent Vasquez-Miranda's physical actions when he arrived at the scene is consistent with the proper tactical actions of an officer who has just arrived at a scene to find his bare-handed partner on top of an unhandcuffed and unfrisked suspect who moments before had been running away from them.

⁵ See, e.g., *Case No. 2012-6652* (Dec. 3, 2012) where an officer forfeited five vacation days after he was found guilty of having failed to properly secure the handcuffs on an arrestee which resulted in the arrestee wriggling out of the handcuffs and briefly escaping. In that case, the officer had loosened the handcuffs because the arrestee had complained that the handcuffs were too tight and were causing him pain.

McEachron recalled that Respondent Vasquez-Miranda arrived at the scene only ten seconds after Respondent Lewis had fallen to the ground on top of Sconiers. As McEachron described it, upon arriving at the scene Respondent Vasquez-Miranda "kind of just piled on them and kind of just jumped on his (Sconiers') back as well" and that Respondent Vasquez-Miranda "kind of just as he is like going down, he like hit him (Sconiers). He kind of just, I don't even know how you say it, he is like already laying so he kind of like put his knee, he kind of dropped down to the ground with his knee right into his (Sconiers') back, too."

Respondent Lewis was in the highly vulnerable position of being bare-handed on top of an unhandcuffed suspect who had just fled from them and had not been frisked. Respondent Vasquez-Miranda, who at that point did not know whether or not Sconiers had run from them because he was in possession of a weapon, was under a duty to protect his partner and to try to ensure his safety as long as Respondent Lewis was in a vulnerable position.

Moreover, Sconiers acknowledged that it was Respondent Vasquez-Miranda, not Respondent Lewis, who placed handcuffs on him. Since it was only after Sconiers was in handcuffs that he no longer posed a potential physical danger to Respondent Lewis, I find that even if Respondent Vasquez-Miranda did hit Sconiers as he dropped down to the ground while trying to protect his partner, this did not constitute actionable misconduct under the specific circumstances he was presented with here.

Therefore, Respondent Vasquez-Miranda is found not guilty of having wrongfully used force against Sconiers by punching him without police necessity.

PENALTY RECOMMENDATIONS

In order to determine appropriate penalties, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

Respondent Lewis was appointed to the Department on January 31, 2006, and Respondent Vasquez-Miranda was appointed to the Department on July 10, 2006. Information from their personnel records that was considered in making these penalty recommendations is contained in the attached confidential memoranda.

The CCRB Administrative Prosecutor recommended that Respondent Lewis forfeit 15 vacation days as a penalty. Although Respondent Lewis has been found not guilty of two of the three Specifications he was charged with, Respondent Lewis has been found guilty of having wrongfully used force against Sconiers by striking him without police necessity. In a recent decision, *Case No. 2014-11562* (Sept. 23, 2015), a five-year officer who had no prior formal disciplinary adjudications forfeited 15 vacation days for improperly frisking an individual and hitting his head against a pole without police necessity. In that case, the Police Commissioner disapproved the Trial Commissioner's recommendation that the officer forfeit 13 vacation days as a penalty.

In determining a penalty recommendation for Respondent Lewis, I have taken into consideration that Respondent Lewis has two previous disciplinary adjudications. One involved on duty misconduct for which he forfeited four vacation days as a penalty. This misconduct did not involve improper use of force. His other disciplinary adjudication involved off duty misconduct for which he forfeited 30 vacation days, 30 pre-trial suspension days, and was placed on dismissal probation for one year. I have also taken into consideration that he has received consistently good performance

evaluations; that he has an impressive Department Recognition Summary; and that he has an excellent sick record.

The CCRB Administrative Prosecutor recommended that Respondent Vasquez-Miranda forfeit 12 vacation days as a penalty. Respondent Vasquez-Miranda has been found not guilty of one of the Specifications he was charged with. Respondent Vasquez-Miranda has been found guilty of having wrongfully used force against McEachron without police necessity and having intentionally tightened the handcuffs on McEachron's wrists. In *Case No. 2013-10481* (Nov. 12, 2014), a five-year officer who had no prior disciplinary record forfeited ten vacation days for punching an arrestee without police necessity. More recently, in *Case No. 2013-10971* (Feb. 26, 2015), a seven-year officer who had no prior disciplinary record forfeited five suspension days after he was found guilty of striking a civilian in the head without police necessity.

In determining a penalty recommendation for Respondent Vasquez-Miranda, I have also taken into consideration that although he has been a member of the Department for almost ten years, he has no prior formal disciplinary record. I have also taken into consideration that he has received consistently good performance evaluations and that he has never reported sick for duty.

Therefore, it is recommended that Respondent Lewis forfeit 15 vacation days as a penalty, and that Respondent Vasquez-Miranda forfeit eight vacation days as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

MAR 22 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSE VASQUEZ-MIRANDA
TAX REGISTRY NO. 942655
DISCIPLINARY CASE NOS. 2014-12674

Respondent received an overall rating of 4.5 on his 2014 performance evaluation, 4.5 on his 2013 evaluation, and 4.5 on his 2012 evaluation. He has been awarded three Meritorious Police Duty medals and two Excellent Police Duty medals. [REDACTED]
He has no prior formal disciplinary record.

On March 17, 2014, he was placed in Level 1 Force Monitoring because he received three civilian complaints during a one year period. This monitoring is continuing.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MATTHEW LEWIS
TAX REGISTRY NO. 941054
DISCIPLINARY CASE NOS. 2014-12673

Respondent received an overall rating of 4.5 on his 2014 performance evaluation, 4.5 on his 2013 evaluation, and 4.5 on his 2012 evaluation. He has been awarded nine Meritorious Police Duty medals and 27 Excellent Police Duty medals. [REDACTED]

He has a prior formal disciplinary record. In 2009, he forfeited 30 vacation days, 30 pre-trial suspension days, and was placed on dismissal probation for one year after he pleaded guilty to, while he was off duty, being unfit for duty; driving while intoxicated; refusing to submit to a breathalyzer test; unlawfully entering the enclosed yard of a residence; urinating on a mailbox; removing a house number that was attached to the front of the residence; and possessing a duplicate shield.

On January 13, 2015, he forfeited four vacation days as a penalty after he was found guilty at trial of the on duty misconduct of searching a vehicle and searching the driver of the vehicle without sufficient legal authority.

On June 5, 2008, he was placed in Level 2 Discipline Monitoring which ended on July 14, 2009. On March 14, 2014, he was placed in Level 1 Force Monitoring because he received three civilian complaints during a one year period. This monitoring is continuing.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials